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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,767	09/12/2005	William Baxendale	I-2002.016 US	5168
31846	7590	08/08/2006	EXAMINER	
INTERVET INC.			HURT, SHARON L	
PATENT DEPARTMENT			ART UNIT	
PO BOX 318			PAPER NUMBER	
MILLSBORO, DE 19966-0318			1648	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/527,767	Applicant(s) BAXENDALE ET AL.	
	Examiner Sharon Hurt	Art Unit 1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
     4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>March 11, 2005</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I**, claim(s) 1 and 4-10, are drawn to a chicken astrovirus type 2, a vaccine, a method of preparation of a vaccine and a method for using the vaccine.

**Group II**, claim(s) 2-3, are drawn to a cell culture infected with chicken astrovirus type 2.

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to materially different inventions with different functions and effects. The cell culture infected with chicken astrovirus can be used for research or diagnostic studies.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with William Blackstone on Tuesday, August 1, 2006 a provisional election was made **with traverse** to prosecute the invention of Group I, claims 1 and 4-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-3 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claims 1 and 4-10 are pending and under examination.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 4-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

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which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is not clear from the disclosure that deposits of chicken astrovirus type 2 (CastV-2) under accession no. I-2932 *at the Collection Nationale de Cultures de Microorganisms (CNCM) of the Institute Pasteur, Paris France* meet all the criteria set forth in MPEP 608/01 (p)(C), items 1-3. Assurance of compliance may be in the form of a declaration or averment under oath. A suggested format for such a declaration or averment is outlined below:

#### SUGGESTION FOR DEPOSIT OF BIOLOGICAL MATERIAL

A declaration by applicant, assignee, or applicant's agent identifying a deposit of biological material and averring the following may be sufficient to overcome an objection and rejection based on a lack of availability of biological material.

1. Identifies declarant.
2. States that a deposit of the material has been made in a depository affording permanence of the deposit and ready accessibility thereto by the public if a patent is granted. The depository is to be identified by name and address.
3. States that the deposited material has been accorded a specific (recited) accession number.
4. States that all restrictions on the availability to the public of the material will be irrevocably removed upon the granting of a patent.
5. States that the material has been deposited under conditions that ensure that access to the material will be available during the pendency of the patent application to one determined by the Commissioner to be entitled thereto under 35 CFR 1.14 and 35 USC 122.
6. States that the deposited material will be stored with all care necessary to keep it viable and uncontaminated for a period of at least five years after the most recent request for the furnishing of a

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sample of the deposited microorganism, and in any case at least thirty (30) years after the date of a deposit or for the enforceable life of the patent, whichever is longer.

7. Acknowledges the duty to replace the deposit should the depository be unable to furnish a sample when requested due to the condition of the deposit.

8. That he/she declares further that all statements made therein of his/her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Additionally, the deposit must be referred to in the body of the specification and be identified by deposit (accession) number, name and address of the depository, and the complete taxonomic description.

As a possible means of completing the record, applicants may submit a copy of the deposit receipt.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cook (US Patent No: 6,086,892, 2000). Cook teaches a method for protecting poultry against infectious diseases using vaccines (Abstract). Cook teaches an inactivated virus mixed with an adjuvant such as aluminum hydroxide or a composition consisting of mineral oil or plant oil and one or more emulsifiers like Tween 80 and Span 80 (pharmaceutical acceptable carriers) (column 4, lines 6-11). Cook teaches the use of attenuated strains of virus for the preparation of a vaccine to immunize poultry

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(column 1, lines 6-11). Cook teaches that attenuated vaccines may be administered in combination with other live vaccines (column 3, lines 53-57). Cook teaches that the virus may be grown in avian cell culture, such as chick embryo kidney cells and attenuated by passaging the virus in cell culture (column 3, lines 25-28). Cook teaches that such live vaccines may be administered by eye drop, nose drop, in drinking water, or by spraying the birds (column 3, lines 47-49). Cook does not teach a chicken astrovirus type 2 that is deposited at the CNCM in France.

Koci et al., (Avian Pathology, 2002, Vol. 31, p. 213-2270). Koci et al., teaches about avian astroviruses and their importance in the poultry industry (Abstract). Koci mentions the hope for development of an effective vaccine strategy against the pathogen (p. 223, second column).

Imada et al. (Journal of Virology, Sept. 2000, Vol. 74, No. 18, p. 8487-8493). Imada et al. teaches about Avian Nephritis Virus (ANV) which is a member of the Astroviridae and describes the construction of ANV infectious cDNA.

Nor Cook, Koci et al. or Imada et al. teach the use of chicken astrovirus type 2 (CastV-2) under accession no. I-2932 *at the Collection Nationale de Cultures de Microorganisms (CNCM) of the Institute Pasteur, Paris France.*

Claims 1 and 4-10 are free of the prior art.

### **Conclusion**

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Hurt whose telephone number is 571-272-3334. The examiner can normally be reached on M-F 8:00 - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sharon Hurt

4 August 2006

  
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